

## DEFENDANT INFORMATION RELATIVE TO A CRIMINAL ACTION - IN U.S. DISTRICT COURT

BY:  COMPLAINT  INFORMATION  INDICTMENT  
 SUPERSEDING

## OFFENSE CHARGED

Counts One through Eleven -- Unauthorized Access to a Protected Computer, 18 U.S.C. § 1030(a)(4)  
 Count Twelve -- Criminal Copyright Infringement, 17 U.S.C. § 506(a)(1)(A) & 18 U.S.C. § 2319(b)(1)

Petty  
 Minor  
 Misdemeanor  
 Felony

## PENALTY:

Per count -- \$500,000 fine or twice the gross gain/loss, 5 years of probation, \$400 special assessment

Name of District Court, *or* or Judge/Magistrate Location

NORTHERN DISTRICT OF CALIFORNIA

*CLERK RICHARD H. HAAG A 11:34 AM 8/28/11*  
 U.S. DISTRICT COURT  
 SBA

## DEFENDANT

► TOMORROWNOW, INC.

## DISTRICT COURT NUMBER

CR 11 0642

## DEFENDANT

## IS NOT IN CUSTODY

Has not been arrested, pending outcome this proceeding.

- 1)  If not detained give date any prior summons was served on above charges ►
- 2)  Is a Fugitive
- 3)  Is on Bail or Release from (show District)

## IS IN CUSTODY

- 4)  On this charge
- 5)  On another conviction }  Federal  State
- 6)  Awaiting trial on other charges  
 If answer to (6) is "Yes", show name of institution

Has detainer  Yes } If "Yes"  
 been filed?  No } give date  
 filed

DATE OF ARREST ► Month/Day/Year

Or... if Arresting Agency & Warrant were not

DATE TRANSFERRED TO U.S. CUSTODY ► Month/Day/Year

This report amends AO 257 previously submitted

Name and Office of Person  
 Furnishing Information on this form MELINDA HAAG

U.S. Attorney  Other U.S. Agency

Name of Assistant U.S.  
 Attorney (if assigned) Kyle F. Waldinger & Susan F. Knight

## ADDITIONAL INFORMATION OR COMMENTS

## PROCESS:

SUMMONS  NO PROCESS\*  WARRANT

Bail Amount: \_\_\_\_\_

If Summons, complete following:

Arraignment  Initial Appearance

\* Where defendant previously apprehended on complaint, no new summons or warrant needed, since Magistrate has scheduled arraignment

Defendant Address:

Date/Time: \_\_\_\_\_ Before Judge: \_\_\_\_\_

Comments: \_\_\_\_\_

1 MELINDA HAAG (CABN 132612)  
 2 United States Attorney  
 3  
 4  
 5

FILED  
 2011 SE -8 AM 11:34  
 RICHARD W. WHEELING  
 CLERK, U.S. DISTRICT COURT  
 NORTHERN DISTRICT OF CALIFORNIA  


E-filing

**SBA**

8 UNITED STATES DISTRICT COURT  
 9 NORTHERN DISTRICT OF CALIFORNIA

10 OAKLAND DIVISION

**CR 11 0642**

No.

11 UNITED STATES OF AMERICA,

12 Plaintiff,

13 v.

14 TOMORROWNOW, INC.,

16 Defendant.

VIOLATIONS: Title 18, United States Code, Section 1030(a)(4) — Unauthorized Access to a Protected Computer with Intent to Defraud and Obtaining Something of Value; 17 U.S.C. § 506(a)(1)(A) & 18 U.S.C. § 2319(b)(1) — Criminal Copyright Infringement

17 OAKLAND VENUE

18 INFORMATION

19 The United States Attorney charges:

20 BACKGROUND

21 At all times relevant to this Information:

22 1. The defendant TomorrowNow, Inc. (“TomorrowNow”) was a company engaged  
 23 in the business of providing third-party maintenance and support services to business,  
 24 government, and other organizations that used enterprise software licensed from Oracle  
 25 Corporation (“Oracle”) or one of its related entities, including from Oracle’s predecessor  
 26 companies PeopleSoft, JD Edwards, and Siebel Systems. TomorrowNow maintained its  
 27 headquarters in Bryan, Texas.

28 2. Oracle was engaged in the business of developing and marketing enterprise

INFORMATION

1 software. Oracle also offered maintenance and support services to organizations throughout the  
 2 United States and the world that had licensed its software. This software included products in  
 3 the Oracle's PeopleSoft, Enterprise One, and World product lines. Oracle maintained its  
 4 headquarters in Redwood City, California. Oracle also maintained computer servers at a data  
 5 center in Pleasanton, California, which servers contained some software and related  
 6 documentation pertaining to certain Oracle product lines. Some of these materials were available  
 7 to be downloaded over the Internet by Oracle customers. The authority of any particular  
 8 customer to download materials was governed by Oracle's license agreements with that  
 9 customer, as well as by the terms of use specified on Oracle-maintained websites.

10 **COUNTS ONE**

11 **THROUGH ELEVEN:** 18 U.S.C. § 1030(a)(4) — Unauthorized Access to a Protected  
 12 Computer with Intent to Defraud and Obtaining Something of  
 13 Value

14 3. The factual allegations in paragraphs 1 and 2 are re-alleged and incorporated  
 15 herein as if set forth in full.

16 4. On or about the dates set forth in the separate counts below, in the Northern  
 17 District of California, and elsewhere, the defendant,

18 TOMORROWNOW, INC.,

19 through its employees and agents, did knowingly and with intent to defraud access a protected  
 20 computer belonging to Oracle, without authorization and by exceeding authorized access, and by  
 21 means of such conduct did further the intended fraud and obtain something of value, to wit,  
 22 Oracle software and related information belonging to Oracle:

COUNT	DATE	ITEMS OBTAINED	CREDENTIALS USED TO GAIN ACCESS
One	12/09/2006	Oracle Enterprise One software in the form of electronic software updates ("ESUs") for U.S. payroll	Oracle customer log-in credentials for SPX Corporation
Two	12/11/2006	Oracle Enterprise One software in the form of electronic software updates for tools applications	Oracle customer log-in credentials for SPX Corporation

COUNT	DATE	ITEMS OBTAINED	CREDENTIALS USED TO GAIN ACCESS
Three	12/13/2006	Oracle Enterprise One software in the form of electronic software updates for real estate management	Oracle customer log-in credentials for Merck & Co., Inc.
Four	12/15/2006	Oracle Enterprise One software in the form of electronic software updates for real estate management	Oracle customer log-in credentials for Merck & Co., Inc.
Five	12/29/2006	Oracle Enterprise One software in the form of electronic software updates for Canadian payroll	Oracle customer log-in credentials for Yazaki North America, Inc.
Six	02/14/2007 to 03/02/2007	Oracle World software fixes in the form of Microsoft Word documents	Oracle customer log-in credentials for Metro Machine Corporation
Seven	02/23/2007	Oracle Enterprise One software action requests	Oracle customer log-in credentials for Merck & Co., Inc.
Eight	03/07/2007	Oracle PeopleSoft software in the form of software updates	Oracle customer log-in credentials for Tropical Shipping USA LLC
Nine	03/07/2007	Oracle World software action requests	Oracle customer log-in credentials for Honeywell International, Inc.
Ten	03/28/2007	Oracle PeopleSoft software in the form of maintenance packs	Oracle customer log-in credentials for Tropical Shipping USA LLC
Eleven	04/10/2007	Oracle PeopleSoft software in the form of a software update	Oracle customer log-in credentials for Tropical Shipping USA LLC

All in violation of Title 18, United States Code, Section 1030(a)(4).

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1 COUNT TWELVE: 17 U.S.C. § 506(a)(1)(A) & 18 U.S.C. § 2319(b)(1) — Criminal Copyright  
2 Infringement

3 5. The factual allegations in paragraphs 1 and 2 are re-alleged and incorporated  
4 herein as if set forth in full.

5 6. Beginning on an unknown date, but by no later than in or about March 2005, and  
6 continuing to on or about October 12, 2008, in the Northern District of California, and elsewhere,  
7 the defendant,

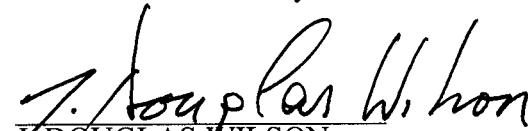
8 TOMORROWNOW, INC.,

9 through its employees and agents, did willfully, and for the purpose of commercial advantage and  
10 private financial gain, infringe the copyrights of copyrighted works, that is, Oracle software, by  
11 reproducing, during a 180-day period, at least 10 copies of one or more of those copyrighted  
12 works, which had a total retail value of more than \$2,500.

13 All in violation of Title 17, United States Code, Section 506(a)(1)(A) and Title 18, United  
14 States Code, Section 2319(b)(1).

15 DATED: 9/7/11

16 MELINDA HAAG  
United States Attorney

17   
18 ✓DOUGLAS WILSON  
19 Deputy Chief, Criminal Division

20 (Approved as to form)   
21 AUSA WALDFINGER  
22 AUSA KNIGHT